

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHARON LALLMAN
Claimant

VS.

U.S.D. 501
Respondent
Self-Insured

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Docket No. 1,035,420

ORDER

Claimant appeals the January 6, 2010, Order of Administrative Law Judge Rebecca Sanders (ALJ). Claimant was denied psychological treatment pending the completion of treatment for claimant's physical work-related injuries. At the completion of the physical injury treatment, the ALJ will further evaluate the psychological treatment recommended by licensed psychologist James R. Eyman, Ph.D.

Claimant appeared by her attorney, Bruce A. Brumley of Topeka, Kansas. Respondent appeared by its attorney, Larry G. Karns of Topeka, Kansas.

This Appeals Board Member adopts the same stipulations as the ALJ, and has considered the same record as did the ALJ, consisting of the independent psychological evaluation report of Dr. Eyman for evaluations on September 21 and 30, 2009, and October 1 and 5, 2009; and the documents filed of record in this matter.

ISSUES

1. Did the ALJ err in denying claimant ongoing treatment for her psychological difficulties?
2. Does the Board have jurisdiction over this issue on appeal from a preliminary hearing order?

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member concludes the Order should remain in full force and effect and the appeal of claimant should be dismissed.

Claimant was employed by respondent on May 10, 2007, when she was struck in the face with a ball thrown by a student. Claimant had a history of chronic pain and fibromyalgia and had undergone extensive dental work before this accident. Claimant has alleged that being struck by the ball in her face has undone almost all of the progress she had managed. Being hit by this ball also caused claimant to experience neck pain and led to a need for psychological treatment for depression, anxiety disorder, somatoform disorder and pain disorder. Claimant contends that the ALJ denied her psychological treatment from this injury in the January 6, 2010, Order. However, a review of the Order does not support claimant's arguments.

While the ALJ did deny claimant psychological treatment at this time, it was not a denial of a connection between the accident and the requested psychological treatment. Rather, the ALJ determined that psychological treatment was not appropriate at this time. The ALJ went on to note in the Order that, upon completion of the treatment for claimant's physical injuries, the ALJ would reconsider the request for psychological treatment.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 44-534a grants the administrative law judge the authority to determine a claimant's request for temporary total disability and ongoing medical treatment at a preliminary hearing. The Board's review of preliminary hearing orders is limited to specific issues as set forth in the statute.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to issues where it is alleged the administrative law judge exceeded his or her jurisdiction and the following issues which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and written claim of the accidental injury?
4. Is there any defense that goes to the compensability of the claim?¹

Claimant requests the Board review the ALJ's determination that it is premature to determine a need for psychological treatment. The ALJ did not find that claimant's psychological problems did not stem from the above described accident. The Order

¹ K.S.A. 44-534a(a)(2).

denies psychological treatment at this time. That is not an issue over which the Board takes jurisdiction on an appeal from a preliminary hearing order. As such, the Order of the ALJ remains in full force and effect and claimant's appeal is dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.² Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

The ALJ did not exceed her jurisdiction in denying psychological treatment at this time. Claimant's appeal in this matter is dismissed.

DECISION

WHEREFORE, it is the finding, decision, and order of this Appeals Board Member that the Order of Administrative Law Judge Rebecca Sanders dated January 6, 2010, remains in full force and effect and the appeal by claimant is dismissed.

IT IS SO ORDERED.

Dated this ____ day of April, 2010.

HONORABLE GARY M. KORTE

c: Bruce A. Brumley, Attorney for Claimant
Larry G. Karns, Attorney for Respondent
Rebecca Sanders, Administrative Law Judge

² K.S.A. 44-534a.